

Message Text

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INFO AMEMBASSY BRASILIA

UNCLAS PORTO ALEGRE 0192

OFFICE OF LEGAL ADVISER PASS JUSTICE ATTN: CIVIL DIVISION)

BRASILIA ATTN: RUEHLE

E.O. 11652: N/A
TAGS: PFOR, CPRS
SUBJECT: LEGAL OPINION RE MERITS OF CASE

REF: UNCLAS STATE 153783
PORTO ALEGRE 179 AND 191

THE LAWYER ENGAGED BY THE CONSULATE (SEE CONSULATE'S 191) FOR LIMITED
PURPOSE OF OBTAINING LEGAL OPINION RE SUBJECT CASE HAS SUBMITTED THE
FOLLOWING REPORT:

(1) COMPETENCE OF LABOR COURTS: LEGAL OPINION IS UNCERTAIN CONCERNING
THE COMPETENCE LABOR COURTS IN CASES INVOLVING FOREIGN GOVERNMENT
OFFICIAL REPRESENTATIONS. THIS COULD BE PRESENTED AS A FIRST ARGUMENT
ON THE PART OF THE DEFENSE. (2) CONCERNING THE MERITS OF THE CASE:
(A) RELATIONSHIP OF PLAINTIFF TO DEFENDENT: THE PLAINTIFF WAS NOT AN
EMPLOYEE OF THE CONSULATE BUT WAS RENDERING SERVICES AS AN APPRENTICE
OR ASSISTANT TO HIS FATHER, SO THAT THE ACTION APPEARS INVALID BECAU-
SE OF LACK OF EMPLOYER-EMPLOYEE RELATIONSHIP. (B) WORK ACCIDENT: THE
PLAINTIFF STATES THAT HE WAS THE VICTIM OF A WORK ACCIDENT, BUT CLAIM
S
RESULTING FROM THIS OCCURRENCE - MEDICAL EXPENSES AND HEALTH BENEFITS
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- ARE OUTSIDE THE COMPETENCE OF A LABOR COURT AND SHOULD BE MADE IN
A COURT OF JUSTICE. (C) WAGES, LEAVE, 13TH MONTH WAGE, SOCIAL SECURI-
TY IF ONE WERE TO ACCEPT THE EMPLOYER-EMPLOYEE RELATIONSHIP CLAIMED
BY THE PLAINTIFF, THE ABOVE ITEMS WOULD BE OWED. HOWEVER, AS CLAIMED,
SINCE THE PLAINTIFF ONLY WORKED 2 DAYS A WEEK HE WOULD NOT BE ELIGI-

BLE FOR THE AMOUNT HE CLAIMS. (3) OPINION OF CONSULATE LAWYER:

"ALTHOUGH I AM CONVICTED THAT THE PLAINTIFF WAS NOT AN EMPLOYEE OF THE CONSULATE, I BELIEVE THAT THE LABOR COURT, FOR REASONS OF EQUITY, WILL GRANT THE PLAINTIFF HIS REQUEST PERTAINING TO THE BENEFITS OWED TO HIM INCLUDING WAGES, LEAVE, 13TH MONTH WAGE AND SOCIAL SECURITY IN ORDER NOT TO LEAVE HIM WITHOUT RESOURCES (TO PAY FOR HIS MEDICAL EXPENSES). SINCE THE LABOR LAW MAKES IT COMPULSORY TO PRESENT A PROPOSAL FOR CONCILIATION, I CONSIDER IT OPPORTUNE THAT AN AGREEMENT BE MADE WHICH WILL PUT AN END TO THE SUIT IN ORDER TO AVOID THAT THE EMINENTLY HUMANE ASPECTS OF THE CASE BE QUESTIONED."
EXTON

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